

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KEVIN LINDSEY,

Petitioner,

v.

THOMAS GRIFFIN,

Respondent.

No. 16-CV-6119 (KMK)

ORDER ADOPTING REPORT &  
RECOMMENDATION

KENNETH M. KARAS, District Judge:

Kevin Lindsey (“Petitioner”) has filed a Petition for a Writ of Habeas Corpus (the “Petition”) pursuant to 28 U.S.C. § 2254, challenging his June 25, 2010 conviction, following a jury trial in Rockland County Supreme Court, for one count of robbery in the first degree, pursuant to § 160.15(3) of the Penal Law of the State of New York. (*See generally* Pet. For Writ of Habeas Corpus (“Pet.”) (Dkt. No. 1); Answer Ex. State Court Record (“State Court Record”) 6 (Dkt. No. 9-1).) On appeal, the Appellate Division affirmed the judgment of conviction. *People v. Lindsey*, 993 N.Y.S.2d 164, 164 (N.Y. App. Div. 2014). On June 29, 2015, the New York Court of Appeals denied Petitioner leave to appeal. *People v. Lindsey*, 25 N.Y.3d 1166 (N.Y. 2015). On January 25, 2016, Petitioner filed a motion to vacate his sentence pursuant to § 440.10 of the Criminal Procedure Law of the State of New York, but the County Court denied the motion in its entirety. (*See* Dkt. No. 9-3 at 22.) Petitioner filed this Petition and related exhibits on July 28, 2016. (Pet.) Respondent filed a Memorandum of Law opposing the Petition on December 9, 2016. (Answer; Mem. of Law in Opp’n to Pet. (“Resp’t’s Mem.”) (Dkt. Nos. 8, 9).) Petitioner filed a Reply in Support of the Petition on January 13, 2017. (Reply in Supp. of Pet. (“Pet’r’s Reply”) (Dkt. No. 11).)

The case was referred to the Honorable Paul E. Davison (“Judge Davison”). (Dkt. No. 4.) On August 20, 2019, Judge Davison issued a Report and Recommendation (“R&R”) recommending that this Court deny the Petition in its entirety. (R&R 66 (Dkt. No. 13).) Judge Davison provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 8(b) of the Rules Governing Section 2254 cases, objections to the R&R were due within 14 days from the receipt of the R&R, or 17 days from the receipt of the same if the R&R was served upon the parties by mail, and that the failure to object or to request extensions of time to file objections within the relevant period of time would constitute a waiver of Petitioner’s right to appeal. (R&R 67.) On September 5, 2019, two days after the deadline to submit objections had passed, Petitioner requested an extension of 120 days to object to the R&R. (Dkt. No. 14.) The Court declined to give Petitioner 120 days and instead granted an extension to submit objections by October 12, 2019. (Dkt. No. 15.) Petitioner has not filed any objections.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the Petition and R&R, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the R&R, dated August 20, 2019, is ADOPTED in its entirety.

ORDERED that the Petition is DISMISSED.

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court

certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: October 29, 2019  
White Plains, New York



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KENNETH M. KARAS  
United States District Judge